JAAFAR SIDEK DARUS

v.

PP

COURT OF APPEAL, PUTRAJAYA
KN SEGARA JCA
MOHAMED APANDI ALI JCA
BALIA YUSOF WAHI JCA
[CRIMINAL APPEAL NO: K-05-349-2009]
27 JULY 2012

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in cannabis - Conviction and sentence - Appeal against - Whether appellant had exclusive possession of drugs - Appellant's conduct in not fleeing from police upon being stopped - Whether unequivocally showed innocence - Whether presumption under s. 37(da) of the Dangerous Drugs Act 1952 correctly invoked - Appellant's failure to suggest drugs belonged to others as defence during prosecution's case - Whether fatal to defence*

The appellant was charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') for trafficking in 24,418 grams of cannabis. He was found guilty, convicted and sentenced to the mandatory death sentence. Hence, this appeal. Briefly, the facts showed that the appellant, along with two other women, were apprehended at a school compound by SP6 and a police team. Nothing incriminating was found after inspecting the car they were in and after a physical examination was carried out on the appellant and the two women. After being cautioned, the appellant had taken SP6 and the police team to a single storey house in Kulim ('the house'). Upon arrival, the appellant opened the front door to the house using a key in his possession. On inspection, SP6 found 25 packets wrapped in 'kertas kekuningan' in the bathroom. All 25 packets were seized and taken to the chemistry department for analysis by the chemist and were found to contain 24,418 grams of cannabis. In his defence, the appellant chose to make an unsworn statement from the dock, stating that he had no knowledge of the existence of the impugned drugs in the house. According to the appellant, he had resided fully at his house in Butterworth and that during this time his friends, one Yusof and one Ahmad, had used the house. Further, the appellant

A submitted that he had at all times cooperated with the police. The grounds of appeal advanced by the appellant herein were that the High Court judge had erred in law and in facts (i) in holding that the respondent had proved the appellant had exclusive possession of the cannabis in the house; (ii) in not holding that the B appellant's actions were consistent with the submission that he had no knowledge of the existence of the impugned drugs; (iii) in invoking a double presumption against the appellant; and (iv) in holding that the characters of Yusof and Ahmad in the appellant's defence had not been suggested in the prosecution case and thus C was fatal to the defence.

Held (dismissing the appeal; affirming conviction and sentence)

Per Balia Yusof Wahi JCA delivering the judgment of the D court:

(1) The trial judge was correct in inferring that the appellant must have had knowledge of the drugs which was under his custody and control. There was no fault with the trial judge in not concluding that there were others who could have E planted the drugs in the house. Knowledge, as a matter of law, can and has always been inferred from the facts and circumstances of the case (*Parlan Dadeh v. PP*, refd; *Surentheran Selvaraja v. PP*, refd). The inference of knowledge drawn by the trial judge was rightly made. There was no F justification to disturb such finding. (paras 14 & 19)

(2) The appellant had submitted that the conduct of the appellant in not fleeing from the police party upon being stopped was consistent with his innocence. Whilst the conduct of an G accused person fleeing the scene was a relevant factor for consideration, such conduct must be weighed against the whole circumstances of the case. The drugs herein were not found in the car or in the appellant's physical possession at the time of his arrest but were found in a bathroom of his H house. When his car was stopped, nothing was found in his possession and neither was anything found in the car. There was certainly no reason for him to flee the scene. The conduct of the appellant in not fleeing from the scene at the time of his arrest was irrelevant. This conduct of not fleeing I from the scene did not unequivocally show innocence. (para 17)

(3) The trial judge had found possession as being established against the appellant based on the evidence proffered and the inferences drawn. In other words, possession was established not by way of presumption. The only presumption drawn by the trial judge was for the offence of trafficking which was by way of the amount of the cannabis found to be in the appellants' possession exceeding 200 grams in accordance with s. 37(da) of the Act. Thus, there was no error on the part of the trial judge in invoking the said presumption under s. 37(da) of the Act. (paras 22 & 23)

(4) Perusing the appellant's unsworn statement and the entire evidence adduced, nowhere was there any suggestion that the drugs belonged to the two named persons, *ie*, Yusof and Ahmad, was made by the appellant except when he was giving his unsworn statement. It was within the province of criminal law for the defence to put forth its defence and its version of the story during the prosecution's case. But the appellant had not. The appellant had failed to avail himself of this opportunity. Thus, there was no error of law made by the trial judge. There was no merit in the appellant's appeal. (paras 29 & 30)

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah dituduh di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('Akta') dengan pengedaran 24,418 gram kanabis. Perayu didapati bersalah, disabit dan dihukum mati. Oleh itu, rayuan ini. Secara ringkas, fakta-fakta menunjukkan bahawa perayu, bersama dengan dua orang wanita lain, telah ditahan di kawasan sebuah sekolah oleh SP6 dan sepasukan polis. Tidak terdapat bahan-bahan yang boleh menunjukkan bahawa mereka bersalah dijumpai di dalam kereta mereka atau atas tubuh badan mereka selepas pemeriksaan fizikal dijalankan ke atas perayu dan kedua-dua wanita tersebut. Selepas diberi amaran, perayu telah membawa SP6 dan pasukan polis ke sebuah rumah satu tingkat di Kulim ('rumah itu'). Semasa tiba di rumah itu, perayu telah membuka pintu rumah dengan menggunakan kunci dalam milikannya. Selepas pemeriksaan, SP6 telah menemui 25 bungkusan yang dibalut dengan kertas kekuningan di dalam bilik air. Kesemua 25 bungkusan dirampas dan dihantar ke jabatan kimia untuk dianalisa oleh ahli kimia dan didapati bahawa ia mengandungi

A 24,418 gram kanabis. Dalam pembelaannya, perayu telah memilih untuk memberi keterangan tanpa bersumpah dari kandang, di mana beliau menyatakan bahawa beliau tidak mempunyai pengetahuan mengenai kewujudan dadah di dalam rumah itu. Menurut perayu, beliau telah tinggal di rumahnya di Butterworth sepenuhnya dan
B pada masa itu sahabat-sahabatnya yang bernama Yusof dan Ahmad telah menggunakan rumah itu. Seterusnya, perayu telah berhujah bahawa beliau pada setiap masa telah bekerjasama dengan pihak polis. Alasan-alasan rayuan yang dikemukakan oleh perayu adalah bahawa Hakim Mahkamah Tinggi telah khilaf dari
C segi undang-undang dan fakta (i) dalam memutuskan bahawa responden telah membuktikan bahawa perayu mempunyai pemilikan eksklusif kanabis di dalam rumah itu; (ii) dalam tidak mendapati bahawa tindakan perayu adalah selaras dengan hujahan perayu bahawa beliau tidak mempunyai pengetahuan mengenai kewujudan
D dadah tersebut; (iii) dalam menggunakan anggapan berganda terhadap perayu; dan (iv) dalam memutuskan bahawa Yusof dan Ahmad di dalam pembelaan perayu tidak dicadangkan di dalam kes pendakwaan dan ini adalah fatal kepada pembelaan.

E **Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)**

Oleh Balia Yusof Wahi HMR menyampaikan penghakiman mahkamah:

F **(1)** Hakim bicara betul apabila membuat kesimpulan bahawa perayu mempunyai pengetahuan mengenai dadah yang berada di bawah jagaan dan kawalannya. Tiada kesalahan dengan dapatan hakim bicara apabila beliau tidak memutuskan bahawa terdapat orang lain yang mungkin telah meletakkan dadah di
G dalam rumah itu. Pengetahuan, sebagai perkara undang-undang, boleh dan sentiasa disimpulkan dari fakta-fakta dan keadaan kes (*Parlan Dadeh v. PP*, dirujuk; *Surentheran Selvaraja v. PP*, dirujuk). Inferens pengetahuan yang dibuat oleh hakim bicara telah dibuat dengan betul. Tiada justifikasi
H untuk mengganggu dapatan itu.

(2) Perayu telah berhujah bahawa tindakan perayu yang tidak cuba melarikan diri semasa ditahan oleh pihak polis menunjukkan bahawa beliau tidak bersalah. Walaupun tindakan orang yang dituduh cuba melarikan diri adalah faktor relevan
I untuk dipertimbangkan, tindakan seperti itu harus ditimbang

terhadap keseluruhan keadaan kes itu. Dadah di dalam kes ini tidak dijumpai di dalam kereta atau atas tubuh badan perayu semasa beliau ditahan tetapi ditemui di dalam bilik air di rumah perayu. Apabila kereta beliau ditahan, tiada apa-apa ditemui dalam milikannya atau di dalam keretanya. Tiada sebab untuk perayu cuba melarikan diri. Tindakan perayu tidak cuba melarikan diri pada masa beliau ditahan adalah tidak relevan. Tindakan tidak melarikan diri tidak semestinya menunjukkan orang itu tidak bersalah.

(3) Hakim bicara telah mendapati milikan telah dibuktikan terhadap perayu berdasarkan keterangan yang diberi dan inferens yang dibuat. Dalam erti kata lain, milikan telah dibuktikan tidak melalui anggapan. Anggapan yang dibuat oleh hakim bicara adalah bagi kesalahan pengedaran melalui jumlah kanabis yang dijumpai di dalam milikan perayu yang telah melebihi 200 gram di bawah s. 37(da) Akta. Oleh itu, tiada kesalahan dari sudut hakim bicara dalam menggunakan anggapan tersebut di bawah s. 37(da) Akta.

(4) Melihat kepada kenyataan tidak bersumpah perayu dan semua keterangan yang telah dikemukakan, tidak terdapat apa-apa cadangan di mana-mana bahawa dadah itu adalah milikan dua orang yang telah dinamakan, iaitu, Yusof dan Ahmad, dibuat oleh perayu kecuali apabila beliau memberi kenyataan tidak bersumpah. Ia adalah dalam bidang tugas undang-undang jenayah untuk pembelaan mengemukakan pembelaannya dan versinya semasa kes pendakwaan. Tetapi perayu gagal berbuat demikian. Perayu gagal mengambil peluang itu untuk membela dirinya. Oleh itu, tiada kesalahan undang-undang yang dibuat oleh hakim bicara. Tiada merit di dalam rayuan perayu ini.

Case(s) referred to:

Abdullah Zawawi Yusoff v. PP [1993] 4 CLJ 1 SC ***(refd)***
Andy Bagindah v. PP [2000] 3 CLJ 289 CA ***(refd)***
Chan Chwen Kong v. PP [1962] 1 LNS 22 HC ***(refd)***
Ibrahim Mohamad & Anor v. PP [2011] 4 CLJ 113 FC ***(refd)***
Ng Hoi Cheu v. PP [1967] 1 LNS 113 HC ***(refd)***
Parlan Dadeh v. PP [2009] 1 CLJ 717 FC ***(refd)***
PP v. Lin Lian Chen [1992] 4 CLJ 2086; [1992] 1 CLJ (Rep) 285 SC ***(refd)***
Surentheran Selvaraja v. PP [2005] 2 CLJ 264 CA ***(refd)***

A *Tan Buck Tee v. PP [1961] 1 LNS 130 HC* ***(refd)***
Wan Marzuki Wan Abdullah v. PP [2008] 4 CLJ 631 CA ***(refd)***
Wong Swee Chin v. PP [1980] 1 LNS 138 FC ***(refd)***
Yeap Boon Hai v. PP [2010] 2 CLJ 338 CA ***(refd)***

Legislation referred to:
B Dangerous Drugs Act 1952, ss. 37, 39B(1)(a)
Evidence Act 1950, s. 8(2)

For the appellant - Muhammad Faiz Fadzil (Safuan Zainuddin with him); M/s Faiz Fadzil & Co
For the respondent - Tengku Amir Zaki Tengku Abdul Rahman; DPP
C

Reported by Suhainah Wahiduddin

D

JUDGMENT

Balia Yusof Wahi JCA:

[1] The appellant was charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') for trafficking in 24,418g
E of cannabis. He was found guilty, convicted and sentenced to the mandatory death sentence. He is now appealing against the said conviction and sentence.

The Facts

F **[2]** On 23 February 2001, SP6 from IPK Pulau Pinang together with a police team headed towards the location at Sekolah Menengah Teknik Kulim upon receiving information relating to firearm offence. On arrival, SP6 directed his men to take their position and soon the appellant arrived in a Proton Saga coming
G from the direction of the school towards where the security post was and heading out of the school compound. SP6 shouted 'police', and immediately stopped the car. SP6 ordered the occupants of the car, two women and the appellant to come out. A physical examination was carried out on the appellant and the
H two other women but nothing incriminating were found. SP6 also inspected the car and again failed to find anything incriminating. After being cautioned, the appellant took SP6 and the police team to a single storey house No. 97, Lorong Tanjung Indah, Taman Indah in Kulim, Kedah. Upon arrival, the appellant opened the
I front door to the house using a key in his possession. The house

has three rooms and was empty. On inspection, SP6 found 25 packets wrapped in "kertas kekuningan" believed to be cannabis in the bathroom in one of the rooms, some neatly arranged and some scattered on the floor. All the 25 packets were seized and taken to the IPD Kulim and were later sent to the chemistry department for analysis by the chemist, SP3. They were found to contain 24,418g of cannabis.

[3] At the end of the prosecution's case, the learned trial judge found a *prima facie* case being established and called upon the appellant to enter his defence.

The Defence

[4] In his defence, the appellant chose to make an unsworn statement from the dock and stated that he had no knowledge of the existence of the impugned drugs in the house. He rented the said house for his second wife, whilst he stayed in Bagan Lalang, Sungai Puyu, Butterworth with his first wife. He only went to Kulim two or three times a week to meet his second wife, and each time he went there, he would only sleep in the front hall of the house and would never sleep in the master bedroom nor did he use the bathroom. From the beginning of January 2001 he had resided fully at his house in Bagan Lalang, Butterworth and concentrated on his food business there. During this time, the appellant stated, his friends Yusof and Ahmad, had used the house.

[5] On the night of the incident, he had gone out with two of his friends, SP7 and SP8 after which they returned to the house and he slept in the front hall with SP8. He did not go to the bathroom and he was unaware as to what was in it. SP7 and SP8 never told him that they saw the impugned items in the bathroom.

[6] The next day, they left the house and was arrested by the police. At all times he had cooperated with the police and he never attempted to escape. He has no knowledge about the drugs found in the house and believe his friends who had access to the house were involved with the drugs.

The Appeal

[7] Before us, four grounds of appeal were advanced by the appellant as in grounds no. 4, 5, 6 and 10 of his petition of appeal as follows:

1. Yang Arif Tuan Hakim Mahkamah Tinggi adalah salah di sisi undang-undang dan fakta di dalam memutuskan bahawa responden telah membuktikan bahawa perayu mempunyai milikan ekslusif terhadap barang kes; (ground no. 4)

2. Yang Arif Tuan Hakim Mahkamah Tinggi adalah salah di dalam mengguna-pakai lebih daripada satu anggapan di bawah Akta Dadah Berbahaya terhadap perayu di akhir kes pendakwaan; (ground no. 5)

3. Yang Arif Tuan Hakim Tinggi adalah salah di sisi undang-undang di dalam tidak memutuskan bahawa kelakuan perayu adalah konsisten dengan tiada pengetahuan kewujudan barang kes di dalam kes ini; (ground no. 6)

4. Yang Arif Tuan Hakim adalah salah secara serius di dalam memutuskan bahawa watak Yusof dan Ahmad yang disebut di dalam pembelaan perayu telah tidak dicadangkan di dalam kes pendakwaan dan ini adalah fatal kepada pembelaannya. (ground no. 10)

Grounds No. 4 And 6

[8] On the issue of possession, the learned trial judge in his grounds of judgment at p. 206 of the appeal records stated:

> Upon the maximum evaluation of the evidence as presented to the Court is of the view that the accused has exclusive possession of the cannabis in the house. The accused was at the material time the tenant of the said house, he has the key to the said house when he was arrested and was the one who opened to let the police party in. There was no evidence to suggest that SP4 and SP8 could have planted the cannabis in the room marked 'B' or neither was there no evidence of others who was mentioned by SP5 who could also have planted the cannabis.
>
> On the unchallenged evidence that the accused being the tenant of the said house at the material time could be reasonably inferred that the accused must have had knowledge of his custody and or control and or possession of the cannabis found in room marked 'B'. It could also be reasonably inferred that the accused must have had knowledge of the contents inside the 25 packets

containing cannabis in his custody control and or possession. On the facts, and in the absence of an explanation, the reasonable inference must be that the accused was aware of that in his custody, control and or possession. It was a case of custody, control and or possession and with full knowledge thereof.

In conclusion, based on the evidence as presented to Court, I make a positive finding that the accused has direct possession of the drugs and therefore, invoke the presumption under s. 37(da) that the accused was in fact trafficking in the dangerous drugs.

[9] This is the conclusion arrived at by the learned trial judge based on his findings of facts.

[10] We are of the view that the learned trial judge has sufficiently considered the evidence of SP4, the owner of the house, SP5 the appellant's second wife, and SP7 and SP8 the two women who were with the appellant on the previous night of his arrest.

[11] SP5, the second wife of the appellant informed the court that she and the appellant slept in the house and no one else. They always slept in the hall and not in the room.

[12] The drugs were found in the bathroom of the house and on the night before the police party came, both SP7 and SP8 were sleeping in the house and both SP7 and SP8 saw the packages on the floor of the bathroom but not the appellant. SP7 slept at the back room of the house while the appellant slept with SP8 in the hall. SP7 testified she saw the drugs and also a gun. At about 2am SP8 woke up to find a mosquito coil. She did not find any but saw a firearm and the packages on the floor of the bathroom. Learned counsel for the appellant submits that in view of that fact, the appellant could not have any knowledge of the drugs. Learned counsel further referred to the evidence of SP5 under cross-examination that she has never seen the appellant deal with the drugs and she has also never seen the packages in the bathroom. She also stated there was a possibility that the appellant's friends were also staying in the house after January 2001. There were a few friends but she was not sure. At p. 67 on the appeal record SP5 stated:

Selepas 1 Januari 2001 ada beberapa orang lain yang tinggal disitu. Saya tidak tahu siapa, mungkin kawan-kawan OKT. Ada beberapa

A orang. Nama tidak tahu. Saya tidak ingat nama-nama seperti Ahmad, Hamid dan Yusof adalah antara orang-orang yang tinggal di situ. Mungkin agak.

... Mungkin ada orang lain yang tinggal di situ, semasa OKT kena tangkap di Padang Lalang. Saya tidak tahu sama ada selepas saya keluar ada orang yang tinggal di situ di tangkap dan di hantar ke Simpang Renggam.

[13] We further note that during re-examination, SP5 when asked how she came to know about others staying in the house after January 2001, she replied a neighbour told her, but does not know the name of the neighbour.

[14] We find no fault with the learned trial judge in not concluding that there were others who could have planted the drugs in the house. Following that we also find that the learned trial judge was also right in inferring that the appellant must have had knowledge of the drugs which was under his custody and control. Knowledge, as a matter of law can and has always been inferred from the facts and circumstances of the case. The materials from which such inference can be made varies from case to case (*Parlan Dadeh v. PP* [2009] 1 CLJ 717, *Surentheran Selvaraja v. PP* [2005] 2 CLJ 264). We agree with the learned trial judge in concluding that:

In the set of facts as in the instant case, the irresistible inescapable inference points strongly to the fact that there was no way the accused being a tenant to the said premises could not have known the existence of the drugs in the room marked "B".

[15] Learned counsel for the appellant further submitted that the conduct of the appellant in not fleeing from the police party upon being stopped is consistent with his innocence. Our attention was drawn to the case of *Ibrahim Mohamad & Anor v. PP* [2011] 4 CLJ 113 to support his submission that such conduct gave rise to an inference that the appellant had no knowledge of the drugs. This conduct of the appellant is relevant under s. 8(2) of the Evidence Act 1950 and the learned trial judge has failed to take this into consideration in inferring knowledge on the part of the appellant of the said drugs.

[16] On this issue, we need only say that whilst the conduct of an accused person fleeing the scene was a relevant factor for consideration, such conduct must be weighed against the whole circumstances of the case.

[17] The drugs in this case were not found in the car or in the appellant's physical possession at the time of his arrest but were found in a bathroom of his house. He was stopped and later arrested by the police and he subsequently led the police team to his rented house. When his car was stopped nothing was found in his possession and neither was anything found in the car. There was certainly no reason for him to flee the scene. In the circumstances of the case, the conduct of the appellant in not fleeing from the scene at the time of his arrest is irrelevant. To our mind this conduct of not fleeing from the scene does not unequivocally show innocence bearing in mind what was stated by the Supreme Court in *Abdullah Zawawi Yusoff v. PP* [1993] 4 CLJ 1:

> The conduct of the appellant in running away when the discovery of the drugs was announced was consistent with his having known of the presence of the drugs in the box before their discovery, indicating hereby a sense of guilt. On the other hand it was conduct equally consistent with the appellant being in a state of pure panic. An innocent man faced with the prospect of arrest on a capital charge might foolishly react in that way.

[18] The inferences drawn by the learned trial judge were based on his findings of facts which we in our appellate jurisdiction would be slow to interfere unless such findings of fact are clearly against the weight of evidence. We will also not interfere unless such findings are perverse or obviously wrong. This is trite law. (*Tan Heng Yeoh v. PP* [1999] 3 CLR 93, *Andy Bagindah v. Public Prosecutor* [2000] 3 CLJ 289, *Wan Marzuki Wan Abdullah v. PP* [2008] 4 CLJ 631).

[19] The inference of knowledge drawn by the learned trial judge was rightly made and we find no justification to disturb such finding. For the aforesaid reason we find the appellant's appeal on these grounds to be without any merits.

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Ground No. 5

[20] At pp. 20-207 of the appeal records, the learned trial judge stated:

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> In conclusion, based on the evidence as presented to court, I make a positive finding that the accused has direct possession of the drugs and therefore, invoke the presumption under s. 37(da) that the accused was in fact trafficking in the dangerous drugs.

[21] Learned counsel for the appellant submitted that the learned C trial judge has erred in invoking a double presumption against the appellant.

[22] With due suspect, we fail to see how that could be so. The learned trial judge has found possession as being established against the appellant based on the evidence proffered and the D inferences drawn. In other words, possession was established not by way of presumption. The only presumption drawn by the learned trial judge is for the offence of trafficking which is by way of the amount of the cannabis found to be in the appellants' possession exceeding 200g in accordance with s. 37(da) of the E Act.

[23] Learned counsel for the appellant must have misinterpreted and misunderstood the above quoted passage from the learned trial judges' judgment.

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[24] We find no error on the part of the learned trial judge in invoking the said presumption under s. 37(da) of the Act. The appellant's appeal on this ground must also fail.

G Ground No. 10

[25] In his unsworn statement, the appellant denies any knowledge of the drugs and put the blame squarely on his friends named Yusof and Ahmad. The appellant stated at p. 208 of the appeal record:

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> Saya langsung tidak ada pengetahuan tentang barang-barang kes tersebut. Saya langsung tidak terlibat di dalam kes ini. Saya percaya kawan-kawan saya yang ada akses ke rumah tersebut terlibat dengan kes tersebut.

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[26] And this is what the learned trial judge's observation was on the evidence of the appellant regarding these two named persons at p. 214 of the appeal record:

> The Court observed that in the course of the prosecution's case when the raiding officer (SP6) or investigating officer (SP9) were giving evidence, it was not put to both SP6 and SP9 respectively during cross-examination that it was Yusof and Ahmad who had access to the premises and to the room where the drugs found and could have put the drugs there. The two names mentioned only surface during the defence case through the accused unsworn statement.

[27] After having referred to the oft quoted authorities of *Wong Swee Chin v. PP* [1980] 1 LNS 138, *PP v. Lin Lian Chen* [1992] 4 CLJ 2086; [1992] 1 CLJ (Rep) 285 and *Yeap Boon Hai v. PP* [2010] 2 CLJ 338, the learned trial judge at p. 215 of the appeal record held:

> Reverting to the instant case, the Court is of the view that failure by the accused through his counsel to put the defence version to SP6 and SP9 during cross-examination that the two friends named Yusof and Ahmad respectively had accessed the premises and could possibly have placed the drugs in toilet (bilik air) is fatal to the defence case. In this case the failure to put across the defence case is compounded by the fact that the name of accused's friends only sprung up during the defence's case and by way of an unsworn statement from the dock which cannot be cross-examined by the learned DPP and the Court and naturally the weight to be attached to the said statement must be minimal. I think by raising it for the first time during the defence case is an illustration of fabrication and an afterthought and the acceptance of the testimony of SP6 and SP9 that there were no one else who had exclusive accessed to said premises except the accused.

[28] We do not find any error on the part of the learned trial judge in coming to that conclusion. His Lordship has applied the right principles of law and was clearly guided by the authorities cited.

[29] The learned trial judge has reproduced the appellant's unsworn statement from the dock at p. 207 of the appeal record *in extenso*. We have perused the same and the entire evidence adduced. No where can we find any suggestion that the drugs belong to the two named persons, Yusof and Ahmad was made

by the appellant except when he was giving his unsworn statement. We wish to reiterate that it is within the province of criminal law for the defence to put forth its defence and its version of the story during the prosecution's case. But the appellant has not. We would refer to such authorities as *Tan Buck Tee v. PP* [1961] 1 LNS 130 and *Chan Chwen Kong v. PP* [1962] 1 LNS 22.

[30] The appellant has failed to avail himself of this opportunity. In the circumstances, we agree with the learned trial judge's treatment of the matter and we find no error of law made. We are unable to agree with learned counsel's submission on this point.

[31] In all fairness to the defence, we have not failed to observe that during the cross-examination of SP5, she did state that after January 2001 there was a possibility that a few friends of the appellant whom she does not know stayed in the house. The names of Yusof, Ahmad and Hamid were according to her probably the persons, although initially she stated she does not know their names. She said she knew it from a neighbour but she does not know that neighbour. Be that as it may, still it was never suggested by the defence that these persons had anything to do with the drugs found in the house let alone being the owner of the same, and it was also never suggested that those persons could have placed the said drugs in the house.

[32] We agree with the learned trial judge. It was only during his unsworn statement from the dock that the appellant did ever suggest that the drugs found in the house were not his and it was his friends Yusof and Ahmad who were responsible for it. We do not find any error in the said findings.

[33] We further agree with the learned trial judge's treatment of the appellant's evidence in his defence which was by way of an unsworn statement from the dock. The appellant had the right to do so and the court was entitled as it did to have attached minimal weight to such evidence. (*Ng Hoi Cheu v. PP* [1967] 1 LNS 113).

[34] In the upshot, we find the appellant's complaint on this ground also to be without any merit.

[35] For the aforesaid reasons, we find there is no merit in the appellant's appeal and we are unanimous in dismissing the same. The conviction and sentence by the High Court is hereby affirmed.

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